

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	4:09CR3072
	)	
v.	)	
	)	
JEMAIN LARON SIDNEY,	)	MEMORANDUM AND ORDER
	)	
Defendant.	)	
_____	)	

The Eighth Circuit has determined that the *Fair Sentencing Act of 2010* is not retroactive and thus the statutory minimum existing at the time the offense was committed governs. *United States v. Tyler*, No. 10-1791 (8<sup>th</sup> Cir., October 12, 2010) (unpublished) (citing *United States v. Carradine*, No. 08-3220, 2010 WL 3619799, at \*4-5 (6<sup>th</sup> Cir. Sept. 20, 2010) (general savings statute, 1 U.S.C. § 109, requires application of penalties in place at time crime was committed unless new enactment expressly provides for its own retroactive application; Fair Sentencing Act of 2010 contains no express statement that it is retroactive and no such express intent can be inferred from its plain language). Accordingly, there is no longer any reason to delay these proceedings.

With the foregoing in mind, I conferred with counsel, and with their agreement,

IT IS ORDERED that:

1. The defendant will have until November 1, 2010 to file a motion to withdraw his plea. The government will have until November 12, 2010 to respond.

2. If I do not grant the motion to withdraw the plea, I will set the matter for sentencing.
3. The parties agree that the proper drug quantity is somewhere between 150 grams and 253 grams with the defendant contending that he should be held responsible for no more than 150 grams and the government contending that he should be held responsible for 253 grams. Because it appears that the difference in drug quantity will not matter as it is likely that I will vary and impose the 10-year statutory minimum sentence, there is no need for an evidentiary hearing to determine a precise drug quantity.
4. Using the Guidelines as amended to account for the Fair Sentencing Act of 2010, the probation officer shall submit an amended sentencing recommendation stating the amended Guideline range if the drug quantity was (a) 150 grams and (b) 253 grams. The amended sentencing recommendation shall be submitted on November 12, 2010. The probation officer shall set forth these calculations as supplemental information denoting the same with an asterisk (\*). The probation officer shall also restate all of the material contained in the original sentencing recommendation. My judicial assistant shall provide the probation officer with a copy of this memorandum and order.

DATED this 12<sup>th</sup> day of October, 2010.

BY THE COURT:

*Richard G. Kopf*

United States District Judge